

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

8 RANDOLFF WESTOVER, individually and
9 on behalf of all others similarly situated,

10 Plaintiff,

11 v.

12 Flagstar Bank, FSB,

13 Defendant.
14

NO.

**CLASS AND COLLECTIVE ACTION
COMPLAINT**

JURY TRIAL DEMANDED

15 **PRELIMINARY STATEMENT**

16 1. This is a collective action brought by Individual Plaintiff Randolff Westover on his
17 own behalf and on behalf of the proposed classes. Plaintiff and the putative class members are or
18 were employed by Defendant Flagstar Bank, FSB (“Flagstar” or “Defendant”), as mortgage
19 underwriters, and were denied proper compensation as required by state and federal wage and
20 hour laws. These employees are similarly situated under Rule 23 of the Federal Rules of Civil
21 Procedure and the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b).

22 2. The FLSA Collective is made up of all persons who have been employed by
23 Defendant as mortgage underwriters at any time within three years prior to this action’s filing
24 date through the trial of this action (the “Collective Period”).

25 3. The Washington Rule 23 Class is made up of all persons who are, have been, or
26 will be employed by Defendants as mortgage underwriters within the State of Washington at any
27 time during the applicable statutory period (the “Washington Class Period”).
28

1 supervisors, directed the work activity of Plaintiff and other mortgage underwriters. Employees of
2 Defendant had the authority to discipline Plaintiff and other mortgage underwriters.

3 10. Defendant Flagstar's gross annual sales made or business done has been
4 \$500,000.00 or greater at all times relevant herein. Defendant operates in interstate commerce
5 by, among other things, selling mortgage loan products in multiple states.

6 11. Defendant Flagstar has classified (and continues to classify) its mortgage
7 underwriters, including Plaintiff and those similarly situated, as exempt from FLSA and state
8 wage and hour protections.

9 12. Defendant uniformly misrepresented to Plaintiff and other mortgage underwriters
10 that they were exempt employees and therefore ineligible to receive overtime pay. In reality,
11 Plaintiffs and other mortgage underwriters are, and were, nonexempt employees who are, and
12 were, entitled to overtime pay.

13 13. Defendant failed to allow meal periods of at least 30 minutes to Plaintiff and the
14 Washington Class. It also failed to allow rest periods of at least 10 minutes for each 4 hours of
15 working time. As a result, Defendant regularly required Plaintiff and the Washington Class to
16 work more than five consecutive hours without a meal period, and four consecutive hours without
17 a rest period.

18 14. Plaintiff and those similarly situated worked in excess of forty (40) hours per week
19 for Defendant without receiving proper overtime pay.

20 15. By way of example, Plaintiff Westover commuted in a scheduled car pool from
21 approximately November of 2010 through July of 2011, and again from approximately October
22 of 2011 through June of 2012. When he rode in the carpool he worked from 6:45 until 3:30. At
23 least four out of five days per week, Plaintiff Westover was not able to take a meal break.
24 Therefore, during most weeks in this time period, Mr. Westover worked at least 42.75 hours per
25 week. Additionally, Mr. Westover often worked on the weekends for 2-6 hours, which added to
26 his uncompensated overtime.

27 16. By way of further example, Plaintiff Westover worked from home from June 2012
28 until the end of his employment. During this time period he started working at 7:00 am, after his

son boarded his school bus. Plaintiff Westover often worked until 6:00 pm or 7:00 pm four days a week, and until approximately 4:00 pm on Fridays. Thus, even if he took a one hour meal break every day (which he did not), he still worked at least 46 hours in a typical week. Again, Plaintiff Westover also worked on weekends, which added to his uncompensated overtime.

17. Defendant is aware of wage and hour laws. Defendant Flagstar has been sued before for failure to pay overtime to its employees and for other wage and hour violations.

18. Defendant's unlawful conduct has been widespread, repeated, and consistent.

19. Defendant's conduct, as set forth in this Complaint, was willful and in bad faith. Defendant operated under a scheme that has caused significant damages to Plaintiff and the similarly situated individuals.

COLLECTIVE ACTION ALLEGATIONS

20. Plaintiff brings this action on behalf of himself and other similarly situated employees as authorized under the FLSA, 29 U.S.C. § 216(b). The employees similarly situated are as follows:

FLSA Collective: All Persons who have been employed by Defendant as mortgage underwriters within the United States at any time starting three years prior to the filing of the initial complaint in this action until trial of this action.

21. Upon information and belief, Defendant knew that Plaintiff and the FLSA Collective performed work that required overtime pay. Defendant operated under a scheme to deprive these employees of overtime compensation by failing to properly compensate them for all hours worked.

22. Defendant is liable under the FLSA for failing to properly compensate Plaintiff and the FLSA Collective, and as such, notice should be sent to the Collective. There are numerous similarly situated current and former employees of Defendant who have been denied overtime pay in violation of the FLSA who would benefit from the issuance of Court-supervised notice of this lawsuit and the opportunity to join. Those similarly situated employees are known to Defendant and are readily identifiable through Defendant's records.

CLASS ACTION ALLEGATIONS

23. Plaintiff (as “Washington Class Representative”) brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following defined class:

Washington Class: All Persons who are, have been, or will be employed by Defendant as mortgage underwriters within the State of Washington at any time from three years prior to the filing of this complaint through the trial of this action.

24. Numerosity: Upon information and belief, the Proposed Washington Class is so numerous that joinder of all members is impracticable. Plaintiffs are informed and believe, and on that basis allege, that during the applicable statutory period, Defendant employed over forty people who satisfy the definition of the Proposed Washington Class.

25. Typicality: The Washington Class Representative’s claims are typical of the members of the Washington Class. The Washington Class Representative, like other mortgage underwriters, routinely worked more than forty hours per week during the Washington Class Period. The Washington Class Representative had the same duties and responsibilities as other Class members. The Washington Class Representative and the Washington Class were subject to Defendant’s policy and practice of improperly treating and classifying employees in this position as “exempt” from wage and hour laws and failing to pay appropriate overtime compensation and failing to provide legally required meal and rest periods.

26. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits in federal court against large corporate defendants.

27. Adequacy: The Washington Class Representative will fairly and adequately protect the interests of the Washington Class, and has retained counsel experienced in complex wage and hour class and collective action litigation.

1 28. Commonality: Common questions of law and fact exist to all members of the
2 Washington Class and predominate over any questions solely affecting individual members of the
3 Class, including but not limited to:

4 a. Whether Defendant improperly labeled and treated the Washington Class
5 Representative and the members of the Washington Class as exempt from Washington wage and
6 hour laws;

7 b. Whether Defendant unlawfully failed to pay appropriate overtime
8 compensation to the Washington Class Representative and the members of the Washington Class
9 in violation Washington wage and hour laws;

10 c. Whether Defendant violated Washington wage and hour laws by failing to
11 provide the Washington Class Representative and the Washington Class with appropriate meal
12 and rest breaks;

13 d. Whether Defendants failed to keep accurate time records for all hours
14 worked by the Washington Class Representative and the Washington 23 Class;

15 e. Whether Defendant's actions were willful; and

16 f. The proper measure of damages sustained by the Washington Class
17 Representative and the Washington Class.

18 29. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because
19 prosecution of actions by or against individual members of the Washington Class would result in
20 inconsistent or varying adjudications and create the risk of incompatible standards of conduct for
21 Defendant. Further, adjudication of each individual member's claim as a separate action would
22 be dispositive of the interest of other individuals not party to this action, impeding their ability to
23 protect their interests.

24 30. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because
25 questions of law and fact common to the Washington Class predominate over any questions only
26 affecting individual members of the Class, and because a class action is superior to other
27 available methods for the fair and efficient adjudication of this litigation. Defendant's common
28 and uniform policies and practices denied the members of the Washington Class the overtime pay

1 to which they are entitled. The damages suffered by the individual Washington Class members
 2 are small compared to the expense and burden of individual prosecution of this litigation. In
 3 addition, class certification is superior because it will obviate the need for unduly duplicative
 4 litigation that might result in inconsistent judgments about Defendants' practices.

5 31. Plaintiffs intend to send notice to all members of the Washington Class to the
 6 extent required by Rule 23. The names and addresses of the members of the Washington Class
 7 are available from Defendant.

8 **FIRST CLAIM FOR RELIEF**

9 **FAIR LABOR STANDARDS ACT**

10 29 U.S.C. §§ 201 et seq.

11 (On Behalf of Plaintiff and the FLSA Collective)

12 32. Plaintiff and the FLSA Collective allege and incorporate by reference the
 13 allegations in the preceding paragraphs.

14 33. At all relevant times, Defendant was an "employer" engaged in interstate
 15 commerce and/or in the production of goods for commerce, within the meaning of the FLSA, 29
 16 U.S.C. § 203. At all relevant times, Defendant employed employees, including Plaintiff and each
 17 member of the Collective.

18 34. Plaintiff and additional opt-in Plaintiffs have consented in writing to be a part of
 19 this action, pursuant to 29 U.S.C. § 216(b). Their consent forms are attached as Exhibit A. As
 20 this case proceeds, it is likely that other individuals will sign consent forms and join as plaintiffs.

21 35. The FLSA requires each covered employer, such as Defendant, to compensate all
 22 non-exempt employees at a rate of not less than one and one-half times the regular rate of pay for
 23 work performed in excess of forty hours per work week.

24 36. Plaintiff and the FLSA Collective are entitled to be paid overtime compensation
 25 for all hours worked in excess of forty hours per work week. By failing to compensate Plaintiff
 26 and the FLSA Collective with proper overtime compensation, Defendant violated the FLSA, 29
 27 U.S.C. §§ 201 *et seq.*

1 37. By failing to record, report, and/or preserve records of hours worked by Plaintiff
2 and the FLSA Collective, Defendant failed to make, keep, and preserve records with respect to
3 each of their employees sufficient to determine their wages, hours, and other conditions and
4 practice of employment, in violation of the FLSA, 29 U.S.C. §§ 201 *et seq.*

5 38. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA,
6 within the meaning of 29 U.S.C. § 255(a).

7 39. Plaintiff, on behalf of himself and the FLSA Collective, seeks damages in the
8 amount of all unpaid overtime compensation owed to himself and the Collective, liquidated
9 damages as provided by the FLSA, 29 U.S.C. § 216(b), interest, and such other legal and
10 equitable relief as the Court deems just and proper.

11 40. Plaintiff, on behalf of himself and the FLSA Collective, seeks recovery of
12 attorneys' fees and costs to be paid by Defendant, as provided by the FLSA, 29 U.S.C. § 216(b).

13 **SECOND CLAIM FOR RELIEF**

14 **VIOLATIONS OF THE WASHINGTON MINIMUM WAGE ACT**

15 **RCW 49.46.130 & RCW 49.46.090**

16 (On Behalf of the Washington Class Representatives and the Washington Class)

17 41. The Washington Class Representative and the Washington Class allege and
18 incorporate by reference the allegations in the preceding paragraphs.

19 42. RCW 49.46.130 requires employers to pay employees one and one-half times the
20 regular rate at which they are/were employed for all hours worked over forty (40) per work week.

21 43. RCW 49.46.090 makes employers who violate RCW 49.46.130 liable to the
22 affected employees in the amount of unpaid wages, costs, attorney's fees, and other appropriate
23 relief under the law.

24 44. Defendant's actions, policies, and/or practices as described above violate RCW
25 49.46.130 by regularly and repeatedly failing to compensate Plaintiff and the Washington Class at
26 the required overtime rate.

1 45. As the direct and proximate result of Defendant's unlawful conduct, the
2 Washington Class Representative and the Washington Class have suffered and will continue to
3 suffer a loss of income and other damages. The Washington Class Representative and the
4 Washington Class are entitled to damages, including interest thereon, as well as attorney's fees
5 and costs, incurred in connection with this claim.

6 **THIRD CLAIM FOR RELIEF**

7 **VIOLATIONS OF WASHINGTON'S MEAL AND REST PERIOD REQUIREMENTS**

8 RCW 49.12.020 AND WAC 296-126-092

9 (On behalf of the Washington Class Representative and the Washington Class)

10 46. The Washington Class Representative and the Washington Class allege and
11 incorporate by reference the allegations in the preceding paragraphs.

12 47. RCW 49.12.010 provides that "[t]he welfare of the state of Washington demands
13 that all employees be protected from conditions of labor which have a pernicious effect on their
14 health. The state of Washington, therefore, exercising herein its police and sovereign power
15 declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect."

16 48. RCW 49.12.020 provides that "[i]t shall be unlawful to employ any person in any
17 industry or occupation within the state of Washington under conditions of labor detrimental to
18 their health."

19 49. Pursuant to RCW 49.12.005 and WAC 296-126-002, conditions of labor "means
20 and includes the conditions of rest and meal periods" for employees.

21 50. WAC 296-126-092 provides that employees shall be allowed certain paid rest and
22 meal periods during their shifts.

23 51. By the actions alleged above, including the failure to provide mortgage
24 underwriters with proper rest and meal periods, Defendant have violated the provisions of
25 RCW 49.12.020 and WAC 296-126-092.

26 52. As a result of the unlawful acts of Defendant, the Washington Class
27 Representatives and the Washington Class have been deprived of compensation in amounts to be
28 determined at trial, and the Washington Class Representative and the Washington Class are

entitled to the recovery of such damages, including interest thereon, as well as attorneys' fees pursuant to RCW 49.48.030 and costs.

FOURTH CLAIM FOR RELIEF

FAILURE TO PAY WAGES OWED AT TERMINATION

RCW 49.48.010

(On behalf of the Washington Class Representative and the Washington Class)

53. The Washington Class Representative and the Washington Class allege and incorporate by reference the allegations in the preceding paragraphs.

54. RCW 49.48.010 provides that "[w]hen any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his employment shall be paid to him at the end of the established pay period."

55. By the actions alleged above, Defendants have violated the provisions of RCW 49.48.010.

56. As a result of Defendants' unlawful acts, Plaintiff Hill and the Class have been deprived of compensation in amounts to be determined at trial and, are entitled to such damages, including interest thereon, and pursuant to RCW 49.48.030, Plaintiff Hill and Class members are entitled to payment of attorneys' fees as well.

FIFTH CLAIM FOR RELIEF

WILLFUL REFUSAL TO PAY WAGES

RCW 49.52.050

(On behalf of the Washington Class Representative and the Washington Class)

57. The Washington Class Representative and the Washington Class allege and incorporate by reference the allegations in the preceding paragraphs.

58. RCW 49.52.050 provides that any employer or agent of any employer who, "[w]ilfully and with intent to deprive the employee of any party of his wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract" shall be guilty of a misdemeanor.

59. Violations of RCW 49.46.130, as discussed above, constitute violations of RCW 49.52.050.

60. Violations of RCW 49.48.010, as discussed above, constitute violations of RCW 49.52.050.

61. RCW 49.52.070 provides that any employer who violates the provisions of RCW 49.52.050 shall be liable in a civil action for twice the amount of wages withheld, attorneys' fees, and costs.

62. By the actions alleged above, Defendants have violated the provisions of RCW 49.52.050.

63. As a result of the willful, unlawful acts of Defendants, Plaintiff Hill and the Class have been deprived of compensation in amounts to be determined at trial and pursuant to RCW 49.52.070, Plaintiff Hill and the Class are entitled to recovery of twice such damages, including interest thereon, as well as attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all members of the Collective, prays for relief as follows:

- A. Designation of this action as a collective action on behalf of Plaintiff and those similarly situated and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all those similarly situated apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual consent forms pursuant to 29 U.S.C. § 216(b);
- B. Judgment that Plaintiff and those similarly situated are non-exempt employees entitled to protection under the FLSA;
- C. Judgment against Defendant for violation of the overtime provisions of the FLSA;
- D. Judgment that Defendant's violations as described above were willful;
- E. An award in an amount equal to Plaintiff's and the Collective's unpaid back wages at the applicable overtime rate;

- F. An award to Plaintiff and those similarly situated for the amount of unpaid wages owed, liquidated damages and penalties where provided by law, and interest thereon, subject to proof at trial;
- G. An award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216 and/or other applicable laws;
- H. Pre-judgment and post-judgment interest, as provided by law;
- I. Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court; and
- J. For such other and further relief, in law or equity, as this Court may deem appropriate and just.

WHEREFORE, Plaintiff, on behalf of himself and the Washington Class, prays for relief as follows:

- A. Certification of this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B. Designation of the Washington Class Representative as representative of the Washington Class, and counsel of record as Class Counsel;
- D. Judgment against Defendants for an amount equal to Plaintiff's and the Washington Class' unpaid back wages, including overtime and meal and rest period wages, at the applicable rates, and all other damages available according to proof;
- C. Attorneys' fees and costs of suit, including expert fees, pursuant to RCW 49.46.090, 49.48.030, and 49.52.070, and other applicable state law;
- D. Pre-judgment and post-judgment interest, as provided by law; and
- E. Such other equitable relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury for all issues so triable.

DATED this 23rd day of December, 2014.

TERRELL MARSHALL DAUDT & WILLIE PLLC

By: /s/ Beth E. Terrell, WSBA #26759

Beth E. Terrell, WSBA # 26759

Email: bterrell@tmdwlaw.com

936 N. 34th Street, Suite 300

Seattle, Washington 98103

Telephone: 206.816.6603

Facsimile: 206.350.3528

Matthew C. Helland, *pro hac vice forthcoming*

Email: helland@nka.com

Daniel S. Brome, *pro hac vice forthcoming*

Email: dbrome@nka.com

NICHOLS KASTER, LLP

One Embarcadero Center, Suite 720

San Francisco, California 94111

Telephone: (415) 277-7235

Facsimile: (415) 277-7238

Attorneys for Plaintiff and Putative Class Members